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DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP
2101 L Street NW • Washington, DC 20037-1526
Tel (202) 785-9700 • Fax (202) 887-0689

Writer's Direct Dial: 202-828-2236
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October 2, 1997

BY COURIER

William F. Caton, Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

EX PARTE PRESENTATION

Re: CC Docket No. 96-128

Dear Mr. Caton:

On October 2, 1997, Roger Johnson, CEO of Communications Central, Inc. ("CCI"), and Barry Selvidge, General Counsel of CCI, on behalf of CCI, met with Common Carrier Bureau Deputy Bureau Chief A. Richard Metzger and Counsel to Bureau Chief Kathleen Franco.

They discussed American Public Communications Council ("APCC") and CCI's position on (1) the level of per-call compensation that is fair, and (2) the need for the per-call rate to apply retroactively to the "interim" period as well as prospectively. These positions are described in APCC's comments and the enclosed previously submitted ex parte submission.

If you desire any further information, please contact the undersigned.

Sincerely yours,

Robert F. Aldrich

RFA/nw
Enclosure
cc: A. Richard Metzger
Kathy Franco

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

PROPOSAL FOR RESOLVING REMAND COMPENSATION ISSUES

American Public Communications Council

With the court order vacating the Commission's compensation plan, the Commission is faced with the task of establishing a new plan. The new plan must address, as quickly as possible, both the prospective compensation for the upcoming post-October 7, 1997 period (the "per-call compensation period") and the compensation that is owed for the pre-October 7, 1997 period (the "flat-rate compensation period").

If the plan addresses only the per-call compensation period, there will be a major gap in compensation of payphone service providers ("PSPs"). Under the existing compensation mechanism, payment of compensation is not made until the fourth month after the end of the compensation period. Thus, payments for the fourth quarter of 1996 (4Q 1996) were made in April 1997; payments for 1Q 1997 were made (by the few carriers who paid) in July 1997; payments for 2Q 1997 would be made in October 1997; payments for 3Q 1997 would be made in January 1998; and payments for 4Q 1997 would be made in April 1998. If the Commission's initial remand order addresses only compensation during the upcoming per-call period (leaving it until later to sort out compensation for the flat-rate period) required compensation payments would not resume until April 1998. Since carriers claim that no compensation payment is required in October 1997 (for 2Q97) or January 1998 (for 3Q97) because the court vacated the requirement for those payments, and since only a portion of the compensation was paid in July 1997, this approach leaves independent PSPs without compensation for almost a full year.

The independent PSP industry is not able to sustain a protracted interruption of dial-around compensation. Accordingly, and since the compensation required by Section 276 must be paid in a timely fashion in order to implement the Congressional mandate, APCC proposes the following plan for addressing compensation for the flat-rate period.

At the same time that the Commission addresses compensation for the upcoming per-call period, it should issue an order reestablishing interim compensation for the flat-rate period. The key elements are as follows.

1. Per-Call Compensation Rate. The record in the remand proceeding supports a per-call compensation rate at the same or a higher level than the rate set in the Commission's prior order.

2. Compensation Is Owed for the Flat-Rate Period. PSPs are entitled to fair compensation for the period from November 6, 1996 to October 6, 1997. The same per call rate that is set for the upcoming per call period should also apply to the flat-rate compensation period.

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3. Prompt Interim Payment of Flat-Rate Compensation. In order to ensure prompt payment of flat-rate compensation for the pre-October 7, 1997 period, the Commission must require carriers to make immediate payment of flat-rate compensation, with carriers' shares determined on an interim basis, subject to a later true-up. Interim payments by carriers for the flat rate period should be required to be made promptly after issuance of the Commission's order. Payments delayed after the due date would be subject to penalties and interest.

4. Calculation of Total Flat-Rate Compensation. The total flat-rate compensation to be received by each PSP should be the per-call rate established by the Commission, multiplied by the current average number of dial-around calls per payphone per month (estimated by APCC at 152 calls per payphone per month). Thus, if the per-call rate for the upcoming per call period were set at 35 cents (as in the original FCC orders), the total flat rate would be 35 cents times 152, or $53.20 per payphone per month.

5. Allocation of Interim Flat-Rate Payments Among Carriers. The allocation of flat-rate compensation payments among carriers should be initially made on an interim basis, subject to later true-up, as follows. The initial flat-rate payment obligation would be divided among all wireline carriers (LECs and IXCs) with more than "$X million" in annual toll revenue (interstate, intrastate, and intraLATA), in proportion to each carrier's share of the total toll revenue of that group of carriers, as determined by data reported to the FCC. However, each carrier's initial payment is truly an interim payment because it is subject to later true-up based on the carrier's actual share of dial-around traffic.

6. Final True-Up of Flat-Rate Compensation. After per-call compensation takes effect, every carrier should be required to report, as soon as payment is due for each period, their total dial-around calls for 4Q97 and 1Q98. Within two months after the reports are filed, the Commission would review the reports of all carriers and publish a Public Notice indicating each carrier's share of total dial-around traffic. These shares would represent the final determination of each carrier's share of the flat-rate dial-around payments for the period from November 6, 1996 through October 7, 1997. At that point, it would be up to the carriers to arrange a true-up, among one another, of the difference between their initial and final shares of the total flat-rate compensation. Carriers would be required to pay each other interest on the amount of any underpayment and the corresponding overpayment. However, the total amount of flat-rate compensation collected by each payphone provider would not change. Thus, PSPs would not be involved in the carrier-to-carrier true-up.

This interim compensation plan would ensure that PSPs are provided timely payment from all major carriers for the use of their payphones, as contemplated by Section 276, while at the same time addressing the court of appeals' concerns about the exclusion of carriers from flat-rate compensation and the accuracy of the allocation. LECs would be included in the payment mechanism. Very small carriers would not be required to make initial payments, but would be ultimately required to pay their share as part of a final true-up. Further, each carrier's share would be ultimately adjusted in the final true-up to correspond with its actual share of dial-around traffic.

In short, the proposed interim payment mechanism would follow past Commission precedent regarding interim payment mechanisms. Pending final resolution of compensation for the flat-rate period, the interim payment mechanism would "ensure [each payphone provider] a continuing source of funds -- though not necessarily constituting the compensation ultimately to be received -- in return for provision of [dial-around traffic from payphones]." Lincoln Telephone & Telegraph Co. v. FCC, 659 F.2d 1092, 1108 (D.C. Cir. 1980).